

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

IN RE:)
)
GLOBE BUILDING MATERIALS, INC.,) CASE NO. 01-60182 JPK
) Chapter 7
Debtor.)

ORDER ON MOTION TO LIMIT NOTICE OF INTERIM
FEE APPLICATIONS AND RELATED RELIEF ["MOTION"]

The above-designated Motion was filed on September 7, 2006, by Gordon E. Gouveia, as Chapter 7 Trustee of the bankruptcy estate of Globe Building Materials, Inc.

By limiting the entities to whom notice of interim fee applications would be given, the estate would diminish administrative expenses. This is certainly a worthy goal, but one which the Court cannot accommodate. Fed.R.Bankr.P. 2002(a)(6) provides that notice of an entity's request for compensation or reimbursement of expenses exceeding \$1,000.00 must be given to "the debtor, the trustee, all creditors and indentures trustees". Fed.R.Bankr.P. 2002(m) states the following:

(m) Orders designating matter of notices

The court may from time to time enter orders designating the matters in respect to which, the entity to whom, and the form and manner in which notices shall be sent except as otherwise provided by these rules. (emphasis supplied)

The key provision in this rule is that the Court may designate certain matters with respect to notice – including the entities to whom notice is given – except as otherwise provided by these rules. Fed.R.Bankr.P. 2002(h), in the Court's view, is a provision which fits within the "except as otherwise provided by these rules" provision of Rule 2002(m): the specifically designated limitation of notice in sub-paragraph (h) prohibits further limitation on notice with respect to "creditors that hold claims for which proofs of claim have been filed". Fed.R.Bankr.P. 2002(i) provides a limitation on notice as to entities required to receive notice pursuant to Rule 2002(a)(6). However, the obvious triggering mechanism for the utilization of this provision is

the existence of creditors' committees elected under 11 U.S.C. § 705, who are in essence representative of creditor classes and therefore presumed to be effective protectors of the rights of all creditors whom each committee represents. There are no Chapter 7 committees in this case, and thus the Court deems Fed.R.Bankr.P. 2002(i) to be inapposite to limiting notice as requested by the Trustee.

Based upon the foregoing, the Court finds that it is without authority to limit notice in the manner requested by the Trustee, regrettable as that may be due to the number of creditors who have filed proofs of claim in this case. The notices provided with respect to the First Interim Fee Application of High Ridge Partners, Inc. as Financial Advisors to the Trustee for Allowance of Compensation and Reimbursement of Expenses filed on September 7, 2006 (said notice being that docketed as record entry #3152) and the notice with respect to the First Interim Fee Application of Shaw Gussis Fishman Glantz Wolfson & Towbin LLC as Counsel to the Trustee for Allowance of Compensation and Reimbursement of Expenses also filed on September 7, 2006 (notice of which appears as docket entry #3150) are therefore deficient. Notice of the foregoing Applications must therefore be provided pursuant to Fed.R.Bankr.P. 2002(h).

The Court, however, does have the authority to designate a hearing date, to be provided in the form of notice itself, in the event that objections are filed. The form of notice provided with respect to the Applications is to include this hearing date.¹

IT IS ORDERED that the Trustee's Motion is denied to the extent that the Motion seeks to limit notice other than as provided by Fed.R.Bankr.P. 2002(h).

IT IS FURTHER ORDERED that the Trustee's Motion is granted to the extent of limitation of notice provided by Fed.R.Bankr.P. 2002(h), and that notice of the two Interim

¹ The Trustee's Motion requests that Trustee's counsel be allowed to attend any hearing telephonically. If objections are filed, given the amount of compensation requested, it will be incumbent upon the claimants to appear personally at the hearing, and therefore the Court denies the request for appearance telephonically.

Applications designated above shall be mailed only to the debtor, the United States Trustee, the Trustee, all indenture trustees, creditors that hold claims for which proofs of claim have been filed, and creditors that are still permitted to file proofs of claim by reason of an extension granted pursuant to Fed.R.Bankr.P. 3002(c)(1) or (c)(2).

IT IS FURTHER ORDERED that the sentence "If you do file an objection, the court will set the Application for hearing, which you or your attorney will be expected to attend" shall be deleted from the form of notice utilized and the following substituted in its place: "Any and all objections will be considered at a hearing to be held on **November 21, 2006, at 1:00 P.M.** at Courtroom 8, 5400 Federal Plaza, Hammond, Indiana".

IT IS FURTHER ORDERED that the request for attendance telephonically is denied.

Dated at Hammond, Indiana on September 29, 2006.

/s/ J. Philip Klingeberger
J. Philip Klingeberger, Judge
United States Bankruptcy Court

Distribution:
Debtor, Attorney for Debtor
Trustee, US Trustee
Janice Alwin, Esq.